

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL GONZALES-SANDOVAL
A/K/A DANIEL SANDOVAL-
GONZALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48777

FILED

MAR 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with the intent to commit sexual assault of a child under the age of 14 years and child endangerment. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Daniel Gonzales-Sandoval to serve a term of life in prison with the possibility of parole for the sexual assault of a child under the age of 14 years and a consecutive term of 28 to 72 months in prison for child endangerment.

In addition to the offenses to which Gonzales-Sandoval pleaded guilty, he was charged with four counts of child abuse, lewdness with a child under the age of 14, and sexual assault. The charges stemmed from Gonzales-Sandoval's physical abuse of his girlfriend's two sons and his sexual abuse of her daughter. Gonzales-Sandoval raises two issues on appeal. First, he argues that the district court erred in denying his motion to dismiss four of the eight counts against him on the grounds that the challenged counts alleged acts that occurred beyond the applicable statute of limitations. Gonzales-Sandoval asserts that the district court's erroneous ruling compelled him to plead guilty.

“[T]he statute of limitations is a non-jurisdictional affirmative defense that must be asserted by the defendant or else it is waived.”¹ Here, Gonzales-Sandoval signed a guilty plea agreement in which he acknowledged that entering a guilty plea waived any substantive or procedural matters that could have been raised at trial.² We further note that in addition to the charges Gonzales-Sandoval contends violate the statute of limitations, the State agreed to dismiss, pursuant to the plea agreement, one count of lewdness with a child under the age of 14 and one count of sexual assault on a child. Each of these offenses carried a term of life in prison with or without the possibility of parole. Therefore, by pleading guilty, Gonzales-Sandoval secured the dismissal of two considerably serious offenses, unencumbered by statute of limitations concerns.³ Other than his contention that the district court’s erroneous ruling on his motion to dismiss “forced” him to plead guilty, Gonzales-Sandoval fails to explain how the district court’s ruling rendered his plea involuntary or unknowing.

Moreover, the district court’s denial of Gonzales-Sandoval’s motion to dismiss is supported by the submissions before us. NRS 171.095 tolls the statute of limitations for crimes committed in secret until the

¹Hubbard v. State, 110 Nev. 671, 677, 877 P.2d 519, 522 (1994).

²Gonzales-Sandoval did not include a transcript of the plea canvass in his appendix on appeal.

³All four of the offenses Gonzales-Sandoval challenged as violative of the statute of limitations were child abuse offenses pursuant to NRS 200.508. Three of these offenses were charged as gross misdemeanors, while the fourth was charged as a felony.

offenses are discovered.⁴ Here, during grand jury proceedings, the three child victims detailed Gonzales-Sandoval's physical and sexual abuse. All three children testified that Gonzales-Sandoval had threatened to kill them and their mother if they revealed the abuse and that it was these threats that silenced them. It was not until the children's mother secured a temporary protective order against Gonzales-Sandoval that the children reported the physical and sexual abuse to their mother, who reported the events to the police shortly thereafter. This evidence supports a conclusion that Gonzales-Sandoval's crimes were committed in secret and not discovered until the victims reported the abuse to their mother. Thus, the provisions of NRS 171.095 operated to toll the statute of limitations for the challenged offenses.

Second, Gonzales-Sandoval next argues that the imposition of lifetime supervision is unconstitutional for a host of reasons. He first contends that lifetime supervision is unconstitutional under Blakely v. Washington⁵ because it functions as a sentencing enhancement, which must be presented to and found by a jury, unless waived by the defendant. Lifetime supervision, however, does not increase the maximum possible sentence based on additional facts not found by a jury or admitted by a

⁴See State v. Quinn, 117 Nev. 709, 715-16, 30 P.3d 1117, 1121-22 (2001) (holding that discovery occurs when any person other than the wrongdoer has knowledge of the alleged act and its criminal nature, unless the person with knowledge fails to report as the result of threats made by the wrongdoer or for the reasons set forth in Walstrom v. State, 104 Nev. 51, 55-57, 752 P.2d 225, 228-29 (1988), overruled on other grounds by Hubbard, 112 Nev. 946, 920 P.2d 991 (1996)).

⁵542 U.S. 296 (2004).

defendant.⁶ Rather, lifetime supervision is a mandatory special sentence imposed upon all sex offenders upon release after the expiration of the offender's prison term or parole or probationary period.⁷ Consequently, we conclude that Gonzales-Sandoval's argument lacks merit.

Gonzales-Sandoval next argues that should he be paroled, subjecting him to the parole conditions for sexual offenders⁸ and lifetime supervision violates double jeopardy principles. However, lifetime supervision was enacted by the legislature and codified in NRS 176.0931. Even assuming, without deciding, that NRS 176.0931 provides a cumulative punishment for the same offense, "the question of whether double jeopardy is violated by cumulative sentences for the same offense depends solely on the legislature's intent in authorizing such sentences."⁹ By virtue of the fact that NRS 176.0931 was enacted by the legislature, it is clear that the legislature intended that a defendant convicted of a sexual offense be subjected to certain conditions if paroled and lifetime supervision. Therefore, we reject Gonzales-Sandoval's argument.

Finally, Gonzales-Sandoval contends that his sentence of lifetime supervision unconstitutionally restricts his rights to travel and free speech. However, the specific conditions of Gonzales-Sandoval's lifetime supervision will not be determined until after a hearing conducted

⁶See *id.* at 303; *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

⁷*Palmer v. State*, 118 Nev. 823, 827, 59 P.3d 1192, 1194 (2002).

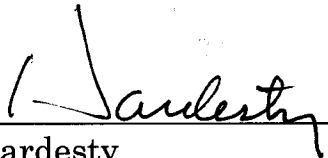
⁸See NRS 213.1245; NRS 213.1255.

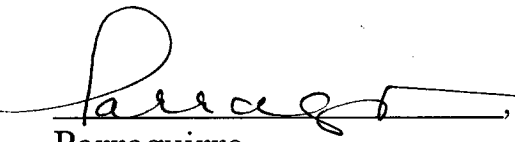
⁹*Talancon v. State*, 102 Nev. 294, 298-99, 721 P.2d 764, 767 (1986).

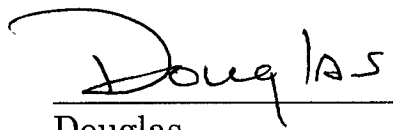
just prior to parole, if indeed he is ever paroled.¹⁰ We decline to speculate upon the effect of conditions not yet defined or that may never materialize.

Having considered Gonzales-Sandoval's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Connie J. Steinheimer, District Judge
Thomas L. Qualls
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹⁰Johnson v. State, 123 Nev. ___, ___, 159 P.3d 1096, 1098 (2007).